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FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

Oct 18, 2023

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF WASHINGTON

ESTATE OF JONNY TORRES, by and through his Personal Representative Manuel Banda; JAMIE VALENCIA, parent of Jonny Torres; MARIA M. TORRES, parent of Jonny Torres,

Plaintiffs,

v.

KENNEWICK SCHOOL DISTRICT NO. 17, a quasi-government agency and agents thereof with knowledge and responsibility; TAMARA VASQUEZ, individually and in her capacity as nurse at Highland Middle School,

Defendants.

No. 4:19-CV-05038-MKD

ORDER DENYING AS MOOT KSD'S MOTION TO DISMISS PURSUANT TO FED. R. CIV. P. 12(b)(6)

**ECF No. 437**

Before the Court is KSD's Motion to Dismiss Pursuant to Fed. R. Civ. P.

12(b)(6), ECF No. 437. KSD asks the Court to "dismiss the Estates' (sic) negligent hiring, supervision, training and retention claims." ECF No. 437 at 2.

1 The Estate argues that KSD has misconstrued the Second Amended Compliant and  
2 the alleged causes of action. ECF No. 487 at

3       The Estate’s Second Amended Complaint includes as a cause of action  
4 “School Negligence and Gross Negligence.” ECF No. 117 at 20-21 ¶¶ 5.1-5.3.  
5 Falling under that heading is a paragraph explaining that “Defendants’ tortious  
6 conduct as described gives rise to the following common law causes of action: . . .  
7 Negligent hiring, training, and retention of employees . . .” ECF No. 117 at 20-21  
8 ¶¶ 5.2, 5.2.4. KSD moves to dismiss this cause of action, arguing that the Second  
9 Amended Complaint fails to allege sufficient facts supporting a negligent hiring,  
10 training, and retention claim. ECF No. 437 at 4-5. Such a claim “is applicable  
11 only when the [employee] is acting outside the scope of his employment.”

12 *Anderson v. Soap Lake Sch. Dist.*, 423 P.3d 137, 208 (Wash. 2018) (quoting  
13 Restatement (Second) of Torts § 317 cmt. a). The Second Amended Complaint  
14 contains no allegations that any KSD employee was operating outside of the scope  
15 of their employment at any time. *See* ECF No. 117.

16       The Estate does not defend the negligent hiring, training, and retention  
17 claim. ECF No. 487. The Estate argues that paragraph 5.2.4 in the Second  
18 Amended Complaint should be read as providing “notice that part of the school’s  
19 negligence includes a failure to reasonably hire, supervise, and retain which is part  
20 of the school’s direct duties to students under Washington law.” ECF No. 487 at 2.

1 The Estate explains that “[a]s such, it is notice of a fact that KSD breached its duty  
2 causing negligence, and not a separate claim for derivative liability on KSD.” ECF  
3 No. 487 at 4.

4 The Washington Court of Appeals addressed similar confusion in *Harris v.*  
5 *Fed. Way Pub. Schs.*, 505 P.3d 140, 144-45 (Wash. Ct. App. 2022). *Harris*  
6 explains that, while there may be a multitude of causes of action against a school  
7 for the actions of its employees, including supervision or training, “there remains a  
8 separate cause of action against the [school] based on its common law special  
9 relationship.” *Id.* The Court of Appeals found that allegations including a failure  
10 to train employees can fall within this umbrella-like cause of action, and be used to  
11 prove a school’s negligence. *Id.* at 147. Further, “the same evidence that would  
12 establish . . . negligence under a broad theory of negligent supervision will also  
13 establish . . . negligence in failing to protect an individual from all foreseeable  
14 harms.” *Anderson*, 423 P.3d at 212 n.18. In other words, KSD may be negligent  
15 for hiring the wrong person, even where that person operates within the bounds of  
16 his or her scope of employment to cause harm.

17 In its Reply, KSD concedes that “since the Estate now represents that these  
18 thirteen allegations, including the allegations of negligent supervision, hiring,  
19 training and retention of employees, are not separate and stand-alone claims  
20 against KSD, the Motion to Dismiss can be denied.” ECF No. 509 at 3-4. Further,

1 KSD concedes that “[a]t trial, the Estate is free to argue that KSD’s alleged  
2 negligent supervision, hiring, training and retention are evidence supporting its  
3 general negligence claim.” ECF No. 509 at 4.

4 The language in the Second Amended Complaint may be interpreted as  
5 alleging a cause of action premised upon KSD’s negligent hiring, training, and  
6 retention of an employee that caused injury while not on duty. The Estate has now  
7 clarified and conceded that it does not pursue such a theory. The parties, and the  
8 Court, now share the same interpretation of the language: Enumerating and  
9 alleging various specific instances of negligence, of which KSD’s alleged broader  
10 “school negligence” or “general negligence” is comprised. The Court considers  
11 KSD’s Fed. R. Civ. P. 12(b)(6) motion moot in light of both KSD and the Estate’s  
12 concessions.

13 Accordingly, **IT IS HEREBY ORDERED:**

14 1. KSD’s Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(6), **ECF No.**  
15 **437**, is **DENIED AS MOOT**.

16 **IT IS SO ORDERED.** The District Court Executive is directed to enter this  
17 Order and provide copies to the parties.

18 DATED October 18, 2023.

19 *s/Mary K. Dimke*  
MARY K. DIMKE  
20 UNITED STATES DISTRICT JUDGE